HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.1392 of 1988

Date of decision : 9.5.2007

Tarlok Singh **.....Petitioner**

versus

Surinder Singh **.....Respondent**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present: Ms.Alka Sarin, Advocate the petitioner.
Mr.Amit Jain, Advocate for the respondent.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The landlord is in revision aggrieved against the order passed by the learned Appellate Authority whereby the tenant's appeal was accepted and the ejectment petition was dismissed.

The petitioner has sought ejectment of the tenant under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act), from the demised premises on the ground that the tenant was inducted in the year 1975-76 @ Rs.90/- per month, but later on the rent was enhanced to Rs.340/- per month w.e.f. 1.4.1981. The tenant paid such rent for the months of April and May, 1981 but thereafter he has not paid or tendered the rent since 1.6.1981 and thus, the tenant is liable to be evicted for non payment of arrears of rent. It was also the case of the landlord-petitioner that the tenanted premises was let out for the manufacturing and sale of Patasha, Gachak and

Roaries of Sugar, but the tenant has started the business of general merchandise without the consent of the petitioner-landlord and thus, changed the user of the premises.

In the written statement, the tenant took up a stand that initially the shop measuring 10'x10' was taken on rent in the year 1969 and in the year 1975 he vacated half of the portion of the shop and rent of the remaining portion was settled at Rs.25/- per month. The tenant denied that the rent was enhanced @ Rs.340/- per month w.e.f. 1.4.1981. He also pleaded that the shop in dispute was taken on rent not only for the purpose of manufacturing Patasha, Gachak and Roaries of Sugar, but for running the of business of Confectionary. The tenant also tendered arrears of rent alongwith interest and costs on 23.9.1983 i.e. before framing of issues.

The learned Rent Controller allowed the petition only on the ground that the rate of rent was Rs.340/- per month and the tender made @ Rs.90/- per month is invalid. In respect of ground of change of user, the Court found that selling of Biscuits, Butter, Bread, Eggs, Cold Drinks etc. cannot be said to be ancillary to the Confectionary and, thus, passed an order of eviction. But the learned Appellate Authority reversed the findings recorded by the learned Rent Controller. The learned Appellate Authority relied upon the house tax assessment register of the Municipal Committee, Doraha, Income tax returns of the landlord for the years 1973-74 and 1974-75 and the oral evidence, to return a finding that the rate of rent of the shop measuring 5'x10' was Rs.25/- per month. In the Income Tax Returns for the years 1973-74 and 1974-75, Exhibit RW-4/1 and RW-4/2 respectively, the petitioner has shown that the part of the property

was on rent @ Rs.900/- per year, whereas in the Income Tax Return for the year 1974-75, the annual rental income is reflected as Rs.300/-. Exhibit P-7, the House Tax Assessment register for the year 1977-78 has assessed the annual letting value of the whole building as Rs.2700/-. The Court also found that the parties are closely related as the landlord is the son of the maternal uncle of the tenant. The stand of the tenant that he is in occupation of the premises since the year 1969 found to be believable. The electricity bills Exhibit R-11 to R-56 pertain to the period starting from August, 1969. Such bills were admitted to be in evidence without objections and the landlord has not cross-examined the tenant in this respect. The Appellate Authority has discussed the entire evidence in detail to return a finding of fact that the rate of rent was Rs.25/- per month.

In respect of the other ground of eviction, it is suffice to state that it is not a case of written covenant of tenancy. The learned Appellate Authority found that there is no evidence of any sale or purchase of the articles of general merchandise in the disputed shop. However, the sale of biscuits, Roaries, Bread, Butter, Juice, Eggs and soft drinks can very well be said to be ancillary to the specific original purpose.

Learned counsel for the appellant could not refer to any evidence that the tenant has started the business of general merchandise. The sale of Biscuits, bread, butter, chocolate etc. is the ancillary to the sale of Patasha, Gachak and Roaries of Sugar.

The findings of fact recorded by the learned Appellate Authority are sought to be disputed by re-appreciation of evidence.

However, it could not be pointed out that any evidence has been misread or not taken into consideration. Therefore, I do not find any illegality or irregularity in the order passed by the learned Appellate Authority which may warrant interference of this Court in exercise of its revisional jurisdiction.

The revision petition stands dismissed.

(HEMANT GUPTA)
JUDGE

May 9, 2007
**mohinder*